In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 16090 of 2006

Date of Decision: 12.10.2006

Mohinder Singh and others.

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. Kanwaljit Singh, Advocate
for the petitioners.

...

J.S. Khehar, J. (Oral).

The petitioners belong to subordinate cadres in the service of the Irrigation Department, Punjab, including the cadres of Supervisors, Beldars, Store Keepers, Time Clerks etc. They claim promotion to the rank of Junior Engineer. It is the contention of the learned counsel for the petitioners, that the petitioners were earlier eligible for promotion to the rank of Junior Engineer, under the provisions of the Punjab Public Works Department (Irrigation Branch) Overseers Engineering State Service, Class-III, Rules 1955 (hereinafter referred to as the 1955 Rules). In fact, the pointed attention of this Court has been invited to Rule 10 of the 1955 Rules. Rule 10 of 1955 Rules, relied upon by the learned counsel for the petitioners, is being extracted hereunder:-

"10. (1) The recruitment to the service shall be made:-

(i) by direct recruitment from amongst students passing out of the Engineering School or any recognised institution; or

(ii) by selection from amongst temporary overseers; or

(iii) by transfer or an official, possessing requisite qualifications, already in the service of the Government whether in the same or another State or of the Union.

(2) Notwithstanding anything in the above rules, appointment to the service shall be made purely by selection and no official shall be entitled to such appointment as of right."

According to the learned counsel for the petitioners, persons holding the posts in the cadres to which the petitioners belong, used to be promoted under clause 1 (iii) of Rule 10 of the 1955 Rules, extracted above.

It is also the contention of the learned counsel for the petitioners, that the 1955 Rules were amended through a notification dated 15.7.1997, by incorporation of sub-clause (iv) under Rule 10(1) of the 1955 Rules. The amended provision is being reproduced hereunder:-

"(iv) by promotion, not less than then percent of the posts in the Service, from amongst the Junior Draftsmen and Surveyors, who have an experience of working as such in the Department for a minimum period of five years and who have obtained diploma in Civil or Mechanical or Electrical Engineering, from a Recognised Institution."

In continuation of the submission noticed in the forgoing paragraph, it is the contention of the learned counsel for the petitioners, that by adding clause (iv) to Rule 10(1) of the 1955 Rules, the authorities have

completely obliterated the rights of the petitioners as also the cadres to which they belong, for promotion to the rank of Junior Engineer.

Additionally, it is the contention of the learned counsel for the petitioners, that a committee of Chief Engineer was constituted to examine the claim of the petitioners, and on the culmination of the determination at the hands of the aforesaid committee, a communication dated 6.11.2003 was addressed by the Chief Engineer, Drainage, Irrigation Department, Punjab, to the Principal Secretary to Government, suggesting the incorporation of a quota for promotion of persons belonging to the cadres to which the petitioners belong. It is the submission of the learned counsel for the petitioners, that despite the aforesaid recommendation, no further action has been taken by the State government to provide for a quota for promotion of the petitioners, to the rank of Junior Engineer.

We have examined Rule 10 of 1955 Rules, extracted above. Clause (iii) of Rule 10(1) of the 1955 Rules, to which our pointed attention was invited during the course of arguments, in our view, does not creat an avenue of promotion, and as such, the submission of the learned counsel for the petitioners to the effect, that there was earlier a provision for promotion of persons from the cadres to which the petitioners belong, is clearly misconceived. In the absence of any quota for promotion to the rank of Junior Engineer, under the unamended 1955 Rules, it is not possible for us to accept the contention of the learned counsel for the petitioners, that the petitioners had a vested right in the nature of a specified quota for promotion to the rank of Junior Engineer prior to the amendment of the 1955 Rules. For the same reason, it is not possible for us to accept, that amendment of the 1955 Rules, whereby clause (iv) has been added to sub-

rule (1) of Rule 10, results in deprivation of the petitioners, from an existing quota for promotion, to the rank of Junior Engineer.

For the reasons recorded above, we find no merit in the first two contentions of the learned counsel for the petitioners.

In so far as, the recommendation at the hands of the committee of the Chief Engineer is concerned, what only needs to be stated is, that a recommendation does not creat a right. A right can only be created, if a specified quota is provided for to the source, to which the petitioners belong. Since no such amendment has been made in the 1955 Rules, earmarking a specified quota for promotion to the petitioners, or the source to which the petitioners belong, it is imperative to conclude, that as of now, there is no provision under the statutory rules, under which they can claim promotion to the rank of Junior Engineer.

For the reasons recorded above, we find no merit in this petition. The same is, accordingly, dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

12.10.2006
sk.